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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,002	03/19/2002	Jean-Jacques Caboche	3-1032-170	5740
7590	10/04/2004		EXAMINER	
Henderson & Sturm Suite 1020 1301 Pennsylvania Avenue N W Washington, DC 20004-1707			HOWARD, SHARON LEE	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b><i>Office Action Summary</i></b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/030,002	CABOCHE ET AL.	
<b>Examiner</b>	<b>Art Unit</b>		
Sharon L. Howard	1615		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

**THE MAILING DATE OF THIS COMMUNICATION:**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 July 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 19-30 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 19-30 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

Receipt of the amendment to the claims has been acknowledged. The 112 (second para.) rejection for claims 4,16,18 have been obviated and are withdrawn.

### **Status of the Claims**

Claims 10-18 have been cancelled and substituted by new claims 19-30.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Newly added claims 25-30 remain rejected under 35 U.S.C. 102(b) as being anticipated by Okada et al. (U.S. patent No. 4,454,161).

Okada teaches a branched glucose polymer and a method for producing a branched glucose polymer by reacting an amyloseous substance with a branching enzyme, by means of conversion of an alpha-1,4-glucan into alpha-1,6 by branching in order to produce a structure similar to that of glycogen or an amylopectin (col.1, lines 10-15, at lines 36-39, and at lines 64-68, bridging col.2, lines 1-4), and thereby to enhance the qualities of the food products into which they are incorporated and, in particular, to prevent retrogradation of the amyloseous material in these food products.

Okada teaches that the branching enzyme can come from animal, plant or microorganism sources (col.1, lines 52-56). Okada teaches that a solution of an amyloseous substance, such as starch, amylose or amylopectin, prepared by gelatinization and dispersion, is thus exposed to the branching enzyme, and is then

mixed with the desired food products, without first undergoing any other treatment or, if necessary, after concentration and drying (col.2, lines 11-16).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Newly added claims 25-30 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Okada '161.

Although Okada is silent with respect to the teaching of the particular amounts, the parameters however, are merely descriptive.

There is no patentable distinction over the prior art teachings of the same composition having the same properties. Okada teaches the same debranching enzyme and starch.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Okada, because Okada teaches branched glucose polymers and a method of producing the polymer, which is known for the purpose of preventing retrogradation of amyloseous substances in food products.

The expected result would be to prevent retrogradation of the amyloseous material in food products, thereby enhancing the quality of the food product.

*Claims 19-24 are allowed.*

***Response to Arguments***

Applicant's arguments filed 7/14/04 have been fully considered but they are not persuasive. Applicant argues that the preparation process according to the invention, carried out before the treatment by the branching enzyme, is different from the one described in the prior art and is thus new. Okada et al. does not teach the same substrate (in the same molecular state) to be treated by the said same branching enzyme.

In response to applicant's arguments, burden is shifted to applicant to show patentable distinction in the product. Okada teaches the same branched polymer of glucose.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (571) 272-0596. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sharon Howard  
September 23, 2004



THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600